

**Air Pollution Control Advisory Council Meeting**  
**March 8, 2001 2:03p.m. –4:35 p.m.**  
**Conference Room 111 of the Metcalf Building**  
**Department of Environmental Quality (DEQ)**

**Attendees**

Council Members

Diane Lorenzen, Chemical Engineering  
Mitchell Leu, Manufacturing  
Dave Noell, Labor  
Dean Johnson, Fuel Industry  
Linda J. Dworak, Veterinarian  
Mike Machler, Meteorologist

Other Attendees

George Algard, Dept. of Agriculture  
Eric Merchant, DEQ  
Gail Abercrombie, MT Petroleum  
Assoc.  
Deb Wolfe, DEQ  
Chuck Homer, DEQ  
Paul Cartwright, DEQ  
Bob Habeck, DEQ  
Elton Erp, DEQ  
Sara Williamson, DEQ  
Ted Kerstetter, Citizen from Hamilton  
Will Snodgrass, Citizen from Missoula  
(Phone Conference)

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**1. Call to Order – Establish a Quorum.** Chairman **Diane Lorenzen** called the Air Pollution Control Advisory Meeting (APCAC) to order at 2:03 p.m. in Conference Room 111 of the Metcalf Building in Helena, Montana, a quorum was present. Absent were Cliff Cox, Dennis Alexander, Kathy Harris, and Brad Black.

- a) **Review of 11/09/00 minutes:** Since members did not receive copies to review, they will be reviewed at the May 2001 meeting.
- b) **Unfinished Council Business:** None.
- c) **New Council Business:** None
- d) **Member Reports to Council:** None.

**2. Housekeeping Remarks:** Mr. Habeck passed out copies of the APCAC proposed meeting calendar for next year which will be the second Thursday every other month except for July when it will be the third Thursday. The Board of Environmental Review's (Board) meeting schedule is also shown.

Mr. Habeck said Mr. Machler had asked about the council member terms. Mr. Habeck said he had checked with the governor's liaison on boards and had been informed that Governor Martz was not thinking about changing the APCAC council at this time.

**Mike Machler** was elected unanimously by the members present to be chairman of APCAC for the present year.

### **3. Discussion Items:**

#### **a) Coal Bed Methane (CBM) Permitting Implications. Eric Merchant, Air Quality Permitter, Air and Waste Management Bureau, Planning and Compliance Division, DEQ.**

Mr. Merchant passed out copies of a paper entitled “Coal Bed Methane Development in Montana and Wyoming: Air Quality Issues.” This is **Exhibit 1** of the minutes and contains the points of his discussion. Two hundred and fifty CBM wells have been permitted at this time and they are using twelve permitted compressor stations, which incorporate twenty-six engines. There will be no more wells permitted until the environmental impact statement (EIS) has been developed. There is the potential of greater than 40,000 wells with supporting compressor stations. The co-leads on the environmental Impact Statement (EIS) is the Montana DEQ and the federal Bureau of Land Management (BLM). This EIS will attempt to coordinate efforts to determine potential impacts of coal bed methane (CBM) development projects under a single EIS that will cover both Wyoming and Montana. This would be ideal but there may be some snags as far as coordinating between the two states. Wyoming is further along than Montana as they have had extensive CMB for some time and have done more analysis and modeling. Wyoming would like to use 1990 meteorological data (MET), while Montana would prefer 1995 MET.

Ms. Dworak asked what MET data was. Mr. Erp responded that it is meteorological data that is used as input to the models. Models take MET data, especially the wind data, to calculate the estimate of where the pollution is going to go and in what concentration.

Mr. Machler asked about the projected schedule of the EIS. Mr. Merchant said they are planning to have a draft by September. Mr. Merchant responded to another question that the 40,000 wells were not just for the Powder River Basin but also other areas in Montana. Mr. Merchant responded to a question that the EIS is being prepared by A.L.L. Consulting of Tulsa, Oklahoma with subcontractors C.H.M.M. Hill of Boise, Idaho. BLM general services administration is contracting the environmental advisory services.

Mr. Johnson asked if the EIS would include data from Wyoming. Mr. Merchant said they were hoping so, as air doesn't look at state boundaries. Mr. Johnson asked how far south the EIS would go and Mr. Merchant said the last conference call indicated it could be as far south as the Colorado border.

Mr. Machler asked why the two states are disagreeing on meteorological data sets. Mr. Merchant responded that Wyoming has been in the process of writing an EIS for a longer period of time probably using the 1990 MET data, while our development at this point is minimal. Mr. Machler asked if Montana thinks the 1995 MET data is better. Mr. Merchant said he did not know the reason for preference. Mr. Machler

commented that developing a new meteorological data sample takes time and money, and just off-hand he couldn't imagine any compelling reason for preferring one data set to the other. In response to another question by Mr. Machler on the level of cooperation, Mr. Merchant said he had not been involved enough in the conversations between the states to tell about the existing relationship.

Mr. Johnson asked about the Environmental Protection Agency (EPA) involvement. Mr. Merchant said they have not been involved in many of the discussions as yet.

Ms. Lorenzen asked about the CBM sources on the Indian reservations. Mr. Merchant said this was discussed at the last meeting so the EIS will need to address this. Mr. Machler said this could be quite important as the Cheyenne and the Crow tribes have differing views on the whole issue of CBM. Mr. Merchant said he felt these sources would be small sources of air pollution but accumulatively they could have an impact.

Ms. Lorenzen asked concerning the life span of a CBM well. Mr. Merchant said about 10 to 15 years.

**b) Energy Emergency Regulations. Paul Cartwright, Resource Protection Planning Bureau (RPPB), Planning, Prevention and Assistance Division (PPAD), DEQ.**

Due to another commitment Mr. Cartwright was next on the agenda. He said he was heading up the effort to revise the regulations under the Energy Supply Emergency Powers Act (90-4-301 et seq. MCA). This Act was initially passed in 1977 and gives the governor power in an energy supply emergency. The Act focuses mainly on electricity and petroleum but covers all fuels. The regulations were issued in 1980 and haven't been changed since. A draft paper with the proposed revisions currently is out for discussion. The hope is to have draft regulations prepared by late spring with final regulations following not too much later. Mr. Cartwright said the main thrust of the revisions would deal more with preparing for a crisis than dealing with a crisis itself. The state is interested in seeing that utilities are prepared with a plan to follow if there is an emergency.

Mr. Habeck asked if Mr. Cartwright had an example. Mr. Cartwright said one of the preparations for the utilities to make is to identify priority customers and see to what extent they can be protected if there is a rolling blackout. Liaisons would be established with county and state coordinators so they would know who and where to go to minimize the impact.

If there was a need the governor could declare an energy alert and order state and local governments to cut back energy use. The state would start providing information to get voluntary reductions. If the governor declared an energy emergency, she could order private producers to follow certain procedures.

Mr. Johnson asked concerning the priority customers. Mr. Cartwright said this would be customers such as hospitals, police, and communication sources. He said in most

cases priority customers would not be on a single circuit. The first choice would be to keep the whole circuit up. The utilities would be asked to identify what circuits the priority customers are on and which circuits can be shut down without an obvious life and limb problem. Emphasis is if blackouts are necessary to keep them to a 15 minute length and not over too wide an area. The energy emergency regulations are to encourage utilities to think things through and have things planned so if an emergency happens whoever is in charge at the time will know what to do.

Ms. Lorenzen asked what the problems were with current regulations. Mr. Cartwright said current regulations call for utilities to serve as a combination energy cop and rationing board – monitoring usage to see if someone is using an excess amount and sanctioning them as necessary. This is cumbersome and unlikely to work.

Mr. Machler asked if changes could be characterized as just updating or as introducing substantial new changes. Mr. Cartwright said some of the changes could be substantial. For instance, a surcharge has been proposed, one that could be invoked immediately to give people a price signal. Rationing is done by price or shortages, and rationing by price may cause fewer problems. California tried to freeze prices and look what happened there. The present proposal is to prepare utilities and the governor in case a blackout option is needed. In the best case, consumers would have some opportunity to choose what they want to drop rather than just be turned off. If a part of the load can be kept, it can keep the consequences down.

Energy problems, or even declarations by utilities or regional authorities, do not in themselves constitute an energy emergency as defined by the Act. An energy emergency exists only if declared by the governor. It can only last 45 days unless ratified by the legislature. This wouldn't be done lightly and it would be clear that something had to be done.

Mr. Machler asked who has the authority to approve these regulations. Mr. Cartwright said the governor and there would be hearings held.

Mr. Johnson asked about the surcharge. Mr. Cartwright said the surcharge would need to be high enough so it would be noticed but not so high it would permanently damage customers. It has to be a number that is psychologically significant, have an effect and be doable.

Mr. Cartwright said they would probably wait until after the legislature adjourns to have hearings.

### **c) Air Toxics Program, Deb Wolfe, RPPB, PPAD, DEQ.**

Ms. Wolfe discussed air toxics and the department's responsibility in regulating air toxics. Her discussion closely followed her handout entitled "Montana Air Toxics" and a copy of this is **Exhibit 2** of the minutes. Ms. Wolfe introduced George Algard to give a short presentation on the air toxics the Department of Agriculture has the

authority to regulate. She said Elton Erp was also present to answer questions on air toxics.

**George Algard, Technical Services Bureau, Montana Department of Agriculture (DOA).**

Mr. Algard said one of the acts administered by the DOA is the Montana Pesticide Act. While there is nothing in the Act that specifically addresses air, most pesticide labels address drift. Drift is the movement of a chemical from where it was applied to a nontarget area. He said if they find drift has occurred they can document it and it would be a violation of the Pesticide Act. Mr. Algard said in their experience they rarely see drift over more than a few hundred yards – but up to a mile has been documented due usually to some environmental condition such as an inversion. He said since the early 90s when antidrift agents were developed and used by almost all commercial and government applicators, very few drift cases have been reported.

Mr. Machler asked how these antidrift agents work. Mr. Algard said some serve as stickers so when the pesticide hits the plants' surfaces they spread out and stick to the plant and are not evaporated. Others have ionic charges that cause them to stay put.

Ms. Dworak asked how monitoring was done for drift. Mr. Algard said they respond to a complaint and do sampling – soil, vegetation, and sometimes water. The lab results will show if the suspected chemical is there.

Mr. Machler asked concerning the additives – might they be a problem when combined although they might not be by themselves. Mr. Algard said additives could be included as inert ingredients in the pesticide formulation. He said EPA has begun a classification of inert ingredients and is requiring companies to identify the inert ingredients used and to remove any that presents a potential for problems. Mr. Algard said most are not in high enough concentrations to be a big concern. He mentioned another problem – pesticides in Canada are cheaper, due to the exchange rate, and Canadians are not as strict on some of their inert ingredients as the EPA. Mr. Algard said they can identify a product as to whether Canadian or United States by their analytical properties.

**Ted Kerstetter of Hamilton** said in the Bitterroot Valley pesticides are becoming a concern to some of the citizens. Mr. Kerstetter asked if there is a mechanism whereby the citizens of an area can request the Department of Agriculture to do air monitoring during times of heavy spraying. Mr. Algard said it could be requested but he seriously doubted the budget would allow it. Mr. Kerstetter asked where citizens would go to request and have implemented some systematic air sampling to find out what they and their animals are being exposed to. Ms. Wolfe said the place to start the process is this advisory council, and if there is a need for regulations to go before the Board of Environmental Review (Board) which is the entity in Montana that adopts air quality regulations. She said another avenue is the legislature.

Mr. Kerstetter said his next question has to do with inert ingredients. He said on some pesticide formulations the inert ingredients count for more than fifty percent of

the total, and some are very toxic. Mr. Kerstetter asked if the Department of Agriculture has any recourse to get the manufacturers to declare what the inert ingredients are, how toxic, and to make that information available to the public.

Mr. Algard said they don't. They do not have any authority in terms of actually registering pesticides. To use a pesticide in Montana a person must be registered by EPA and then listed with the Department of Agriculture. In terms of initially registering that pesticide for use in the United States, it's the responsibility of EPA. He said EPA is presently listing inert ingredients. One is a list of inert ingredients EPA thinks are quite toxic and another lists inert ingredients of lesser concern. Mr. Algard said in future years there should be more movement toward checking on these inert ingredients. Presently, under the Business Confidentiality Act companies can claim that these are confidential parts of their formula and not subject to public scrutiny.

Mr. Kerstetter said this is a loophole in the law for toxic substances. He commented that egregious substances in existence today are called inert but are not inert; and we don't know what they are and this needs to be addressed. Mr. Algard agreed that some are not inert ingredients.

Ms. Dworak said she appreciated having this on the agenda. She is a veterinarian from the Bitterroot Valley and genital anomalies have been observed in White Tail Deer. Some of the residents of the Valley fear the cause could be potential endocrine disruption from pesticides. She said to try to locate the cause they attempted to ascertain what pesticides had been applied. The effort has been disconcerting as there is no information available about what might be in the air. One of the hypotheses put forth was possible drift from a pesticide used in southern Idaho. She said if there was a way to monitor and collect samples or do analyses that could be used in the future when symptoms show up, there would be something to go on. She said she would like this council to explore this.

Mr. Algard said that the Agriculture Department has regulatory authority only in Montana so if it included Idaho it would have to involve the EPA. Secondly, he added, if there is a concern about chemicals from Idaho, you would need to know what specific ones if you were going to design a monitoring program. Mr. Algard felt it needed to begin in Idaho and move to Montana rather than the other way.

Ms. Dworak said there is the complicating factor of synergistic reactions between different compounds and it might not even be pesticides. It might be other things – a whole cocktail of compounds that circulate and are collected in certain ways and at certain times. She said they have no way of tracking that since they have no knowledge of what is being used, where, or how much or when. It kind of crosses over between the Department of Agriculture and air pollution. How might they look at it more?

Mr. Algard said that it could be water borne rather than airborne. He said it doesn't seem to be bothering the domestic animals and it should show up in cow's milk if it is pesticides.

Ms. Dworak said that depends on the type. She said all they have yet is premature conclusions. She said the real issue she is interested in is how to rule these things out as a potential source without some kind of monitoring strategy in place.

Mr. Habeck said a constant theme is that each department has their authority to address different pollutions. He said it appears to be a problem for EPA as it is likely to be long-term and involve more expertise. He said the 188 hazardous air pollutants (HAPS) do not cover pesticides. He asked Elton Erp, monitoring person for PPAD, to discuss what it would take to do toxic surveying as is being suggested.

**Elton Erp, Monitoring and Data Management Bureau, RPPD, DEQ.** He said EPA has abandoned the health basis standard approach of controlling emissions and has turned to the “maximum achievable control technology standard” (MACT) – this basically reduces the amounts of pollutants in the area without trying to figure out exactly how much there is and it’s impact on people. Mr. Erp said forming health-based standards is extremely contentious and was presenting problems. EPA has the list down to 33 toxics that they are looking at in this urban integrated air toxics strategy and has some pilot projects underway. EPA is headed in the direction of urban monitoring of these 33 compounds that were selected for a combination of commonness, ease of assay, and toxicity.

One issue touched on today is inert ingredients. These were added to enhance the pesticide product and its ease of application and so are trade secrets – we don’t know how much of what was applied. They are called inert because they are not the pesticide/herbicide in question but still can be quite toxic. Chemists find what they are looking for and it’s almost impossible to assay for a substance if you don’t know for what you are looking. Also, in science you never rule things out – you rule things in. You could pick specific compounds and assay for them and establish what levels there are and perhaps find some biological relevant information under toxicity and rule them out one by one – but never be able to rule out all. There is always a potential something out there that you didn’t know accompanied the pesticide/herbicide in question.

Mr. Erp said he is not a modeler but he suspected the hypotheses of agricultural practices in Idaho impacting the Bitterroot wouldn’t weigh in very well mathematically. He said it is a very tough question since we don’t know what is being applied and there are not assays to assay for compounds. We need to decide what we are going to look for and select an assay that will work for that one compound and maybe a few of its closest cousins. This is a difficult problem to approach analytically.

Mr. Johnson asked when MACT is treated in a rural area. Ms. Wolfe responded that MACT applies to toxic emissions in excess of ten tons for a single source and 25 tons of any combination coming from a single source. She said the Urban Air Toxics Strategy looks at communities together for various sources that fall under those numbers like dry cleaners or gas stations. But, she said, there is no hard or fast rule about when an area source will need to apply for a MACT. Mr. Johnson commented

this would be up to the state to do. He said with the CBM there could be thousands of engines and although not one is over 10 ton, together they could exceed the emission rate. Ms. Wolfe said it is looked at collectively.

Mr. Homer responded that the way it works is that there is a list of pollutants that are regulated and a list of source categories. If a regulation comes about, EPA would have to go through the process of publishing any source category that is put on the MACT. States could potentially do this also through the same kind of process. They would adopt the standard and basically this would be the same process as adopting any kind of pollution standard.

Ms. Dworak asked if they were to do some kind of state monitoring or site specific air monitoring to cover contaminants what would be the route to set it up. Ms. Wolfe said pesticides are not feasibly monitored. Mr. Erp said this is typically controlled at the point of application – it is far easier to say thou shalt not apply. He said it is technically difficult to make measurements of how much concentration is in the atmosphere and trying to assess its health effects.

Ms. Dworak asked what would be the next step – who to talk to about moving ahead to explore the problem in the Bitterroot.

Mr. Habeck suggested getting tissue samples to use as class samples and looking for those characteristic chemicals causing the genital mutilations or whatever. If you find a constant substance that is found in both plants and animals, you can start regulating the quantities and use of that substance. It is a different route than monitoring but neither DEQ nor DOA would have the budgets to do this kind of monitoring. Mr. Habeck mentioned a Dr. Garen Smith from Missoula who is a well-known air chemist. He also suggested they contact EPA regions 8 or 10 and find out what they could do – although, as was mentioned, they are going away from rural exposures and concentrating on urban air environments.

Mr. Erp said he doubted any kind of commitment of resources would be made without having clearly demonstrated the existence of a problem. He suggested Ms. Dworak work with biologists first to establish how it exists, identify the nature of the problem and then the door might be open to guess what might be causing it.

Ms. Dworak said what prompted her to bring up this problem at this council was that in exploring the issue she had come across a lot of material from California. That state has set up air monitoring programs that are very comprehensive and address a lot of the compounds that is known to be used in the Bitterroot. She said she had not known what the state monitored for or about the HAPs list or much about the EPA regulations.

Ms. Dworak said they have nothing in place right now that could help them even look at a potential source of ongoing pollution. She said what they end up seeing is the by-product of this pollution with no way to do any kind of analysis on the samples they are collecting. The many open variables are overwhelming and this is why it is being

brought before the advisory council to see if they could do anything or what the next step should be.

Mr. Kerstetter said the biological problem is there and it is real. He said he is an animal physiologist and the mule tail deer have identical abnormalities of various kinds. He said they are very concerned and determined to find out what is causing this. They have and are collecting tissue samples and freezing them and will have them analyzed.

Mr. Erp said another issue with an environmental situation like this is that what's causing the problem may not be what is applied but degradation of a product, as the picture can change over time.

Ms. Dworak said what makes it so difficult is they don't have access to records as far as quantity, site of application and when things are applied – so it is impossible to begin to look at trends of applications and what might be participating the symptoms.

Mr. Algard said they do have a system to keep track of what is going on as every applicator that is licensed by the state of Montana has to maintain records of every application he makes. At first the applicators were to do this each year but the volume being reported was so overwhelming that it was changed to being submitted every fifth year. So the last report from Ravalli was in 1995 and from that report this county would fall in the lower one-third of the counties in terms of total usage of pesticides. In 1995, 90 percent of what was used was herbicide. In 1988 every pesticide manufacturer had to pay \$430 per product to EPA. Active ingredients fell from 42,000 to 16,000.

Will Snodgrass of Missoula asked to testify via the phone. He said he had been involved with Judy Hoy and other scientists around the United States for about five years in Montana and about 25 years nationally. He said he had the privilege of working with Dr. Thomas Gary Dubey who designed a lot of the air quality tests that were used in research in Triangle Park by the EPA in formulating their HAPs and other regulations.

He said there were several issues he would like to touch on. One was the issue of dose response. He said the standard dose response does not apply in a case of hormonal dysfunction. A lower level effect predominates and has been demonstrated that very tiny levels of certain chemicals can give catastrophic reproductive effects.

Another issue is drift and newspaper headlines show us that we can have drift from Africa or Asia in just a matter of days after application. He said there was a study by the USGS which documented pesticides coming in from the Soviet Union near Alaska. Alberta, Canada is finding high levels of 2-4D in their rainwater. Ms. Hoy has found through testing on her property in the Bitterroot pesticide residues from fields in California and Idaho. They are at a low level but are causing transduction errors in cellular communication and embryonic development.

Mr. Habeck said we have to narrow this to what the state's jurisdiction is and he offered to furnish some names to contact if Mr. Snodgrass wished to contact him later. He suggested Ms. Dworak contact Mr. Darrin Smith of UofM and the EPA since it is trans-state to see if there are any other studies to emulate or to initiate. He said the DEQ does not have the authority to regulate or monitor for pesticides but is very willing to help as they could with air toxics. Mr. Algard from the Agriculture Department is willing to show you his records of application, although they don't have the manpower or expertise to do the monitoring. He suggested with Judy Hoy's research and the deer samples in hand to contact the Fish, Wildlife and Parks (FWP) Department for assistance. He suggested they stay in touch and to keep him informed and he would be of assistance if he could.

Ms. Dworak thanked all for their input. She said it is a confusing and complex issue. She said she is interested in finding the support for the state to be able to take care of our air in the state. She promised to keep the council up-to-date on what they have planned.

**d) EPA 5-minute SO<sub>2</sub> Standard. Deb Wolfe.**

Ms. Wolfe handed out copies of a handout on this topic. A copy is **Exhibit 3** of the minutes. She went through the handout stressing certain points. EPA did not adopt a new 5-minute SO<sub>2</sub> National Ambient Air Quality Standards (NAAQS) but proposes to require each state to implement a federal Intervention Level Program (ILP) that would contain the authority to take necessary actions to prevent further exceedances of 5-minute SO<sub>2</sub> concentrations. States can do this under emergency powers. An ILP standardizes it so there will not be a need to go to court to justify it later.

Mr. Machler asked if the need for an ILP had been ascertained. He said in the January 9 Register there was discussion on the levels of emission concentrations needed to trigger having monitoring sites. He said judging from Billings there might not be any need to consider monitoring for short term SO<sub>2</sub> at all.

Ms. Wolfe said she wasn't sure and wasn't sure if EPA knew exactly what an ILP would look like or just how it would be implemented. It is up to the states to take the lead on this. EPA has said "States are in a far better position than EPA to assess the highly localized and site-specific factors that determine whether a current 5-minute SO<sub>2</sub> in certain concentrations in a certain area poses significant risks to sensitive asthmatic individuals." She said this is why EPA proposed the ILP in the first place – they will be sure an ILP is in place and have certain baseline levels but the states will fashion appropriate remedial responses.

Mr. Machler asked if the state is now waiting to see what EPA's final rule is. Mr. Habeck said yes. Mr. Erp added that some data used by EPA to come up with likely candidates for monitoring might not be relevant today. Mr. Erp said there is a problem with SO<sub>2</sub> monitoring in that it is oriented toward source compliance rather than population exposure. Also, SO<sub>2</sub> monitors were not designed to operate in a 5-minute time frame – get a 95 percent response in ten minutes – but the short pulse is usually gone before it records at all. Mr. Machler mentioned they are not necessarily

run on the same averaging constant. Mr. Erp added that there is also variation among samplers. Mr. Machler said this would mean standardizing methodology of collecting the data. Mr. Erp said EPA is checking out data questions to get a sense of what relationship was in the 5-minute averages and how many averages we deal with and what the levels out there might be. Mr. Machler said the EPA does make some monitoring recommendations and one of these is to run the analyzers in the 0 to 2ppm range. He said right now they can't measure anything greater than 1ppm. He said this would create a few other problems with calibration systems.

**e) Vapor Recovery Rule Proposal. Charles Homer, Supervisor, Technical Support Section, Air and Waste Management Bureau, DEQ.**

Mr. Homer said he would give a brief presentation on some pending rules. One of these is the Vapor Recovery Rule. He said the department received a request from a Belgrade citizen to consider a rule that would have emission control requirements on vapor leakage from transfer operations at gas stations. This citizen lives near two gas stations and has a problem with emissions from filling the gasoline storage tanks – which are emitted through the vent pipes. The local legislator was approached to introduce legislation but declined so the citizen came to the department. Mr. Homer said the department checked the two gas stations in Belgrade to determine if they needed an air quality permit. The resulting analyses showed both stations were under the 25 ton per year potential to emit limit and did not require an air quality permit. Mr. Homer said there are states in the Pacific Northwest that have vapor recovery regulations – areas with violations of the ambient standard for ozone or areas that have high population densities like Seattle, Spokane or Denver. He said an EPA toxicologist looked into the Belgrade situation and wrote a letter to the citizen and made some recommendations to her. Mr. Homer said after reading a copy of the letter and checking with other states, the department has come to the preliminary conclusion not to support adopting a vapor recovery rule at this time. However, since the citizen plans to proceed with presenting this to the Board to initiate rule making, Mr. Homer requested that it be included in the APCAC schedule for the next meeting to allow this citizen to make a presentation of her side of the issue for the council's consideration.

Ms. Lorenzen asked if this was the first request on this subject. Mr. Homer said it is the first of which he is aware to specifically look at stage 1 and stage 2-vapor recovery for a gas station. He said he had spoken to the citizen that morning and she was interested in coming to the May meeting. Mr. Leu asked if the members could get a copy of the calculations of how much vapor comes off and how often.

Mr. Homer said the department would send copies of the initial inventories that were done for the permit calculations and provide a copy of the letter from the EPA toxicologist. He said they have written to Ms. O'Connell concerning the preliminary determination of the department and some concerns the department had with the EPA letter. A copy of this will also be sent to the council members.

#### **4. Rulemaking Action Items:**

##### **a) Annual Update of Incorporation by Reference. Charles Homer.**

Mr. Homer said this involves an annual update of the department's incorporation by reference of federal rules the department will seek authority to initiate rulemaking on at the next Board meeting. He said there is a significant number of federal regulations that the state has received delegation to enforce. What the department does is incorporate them by reference. This is done on a specific date – the code of federal regulations is updated and the state will then adopt a new volume. Mr. Homer said with this rulemaking a volume dated July 1, 2000, which was recently published, will be adopted. The department does this annually.

Mr. Leu asked if there was a reason this couldn't be done automatically. Mr. Homer responded that the state is not allowed to adopt rules without considering them. He said as a result no updates could be automatically incorporated without the Board considering them.

Ms. Dworak asked for an explanation. Mr. Homer said the Code of Federal Regulations is a compilation of all the rules and a new volume is published each year. He said they receive a set of all the rules that the department enforces– 40 CFR Parts 1 through 99.

##### **b) Air Quality Fee Rule. Charles Homer.**

Mr. Homer said air quality fees fund a significant portion of the department's air quality program. He said two kinds of fees are assessed – application fees and annual operating fees. The legislature established an appropriation for the department and the department is then required to collect that through the fee rules. Mr. Homer said each year they go before the Board and do an analysis of the fee rule and present an updated fee assessment for the next year. Mr. Homer said this is because they are statutorily required to go before the Board and the fees are based on actual emissions from each source. He said they prepare an annual emission inventory by sending out a letter to each regulated facility requesting information to calculate emissions from the previous calendar year. The department takes the total emission inventory for 2000 and divides that into the legislative appropriation to come up with the dollar per ton figure needed to be collected to fund the air quality program. This information is taken before the Board with a request to initiate rulemaking, hearings are held and the rule is generally adopted in September and bills issued in October. Due to being short staffed and creating and testing a new data base, Mr. Homer said they anticipate going before the Board in July rather than May, having the hearing in September and the final action in November. He said the bills would be later than usual but within the statutory time requirement.

Mr. Homer said the only change anticipated other than the dollar per ton figure was the change of the cap amount from \$250,000 to \$500,000. This is due to the acquisition of the Colstrip power plants by PPL-Montana and the combining of all four units into one permit where there had been two permits. Mr. Homer said the department prefers to maintain as much as possible the general proportions that all the

fee payers pay and this would keep the total amount of fees paid by the Colstrip units the same.

Mr. Leu asked if all the companies closing would affect the fee structure next year. Mr. Homer said the impact wouldn't be felt for a couple of years. The emissions from closed facilities will be in calendar year 2001 which won't be reflected until the bills go out in October 2002. But, he said, the requirement remains the same and they are required to collect fees to fund their appropriation. Mr. Homer said several facilities have permits from the department to put in temporary power generators which are usually diesel engines that have significant emissions. This might help offset the lost emissions from the closing companies.

Mr. Johnson asked if EPA might not permit the temporary engines. Mr. Homer said there are questions to yet agree on but permits have been issued to Ash Grove, EXXON, Conoco and several other facilities. He said if everybody operates according to what they have said it could be a small impact. At this point Mr. Homer said they aren't making predictions but it will be an issue a year from now when looking at the fee structure for that year and the inventory and impact will be known.

**5. Confirmed next meeting date for May 10.**

Mr. Habeck said the premailing would include the November 9 minutes, any vapor recovery material the department has, and today's minutes.

Ms. Lorenzen moved the meeting adjourn and it was seconded by Mr. Noell. Motion carried. Meeting adjourned at 4:35 pm.